IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12126 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJESH A SHAH - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR AJ PATEL for Petitioner No.1,
MR AY KOGJE AGP for Respondent Nos.1 to 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 23/02/2007

ORAL JUDGMENT

1. Mr.A.J. Patel, learned counsel for the petitioner and Mr.A.Y. Kogje, learned counsel for the respondents.
2. Present is a petition by an entrepreneur who made an application to the State Government for allotment of

almost about 6000 sq.yards of land for establishment, construction and development of hotel building in or around Saputara Hill Station in Dang District.

3. Somewhere in the year 1987, the State Government came out with a policy that for development of Saputara Hill Station, land would be allotted to the entrepreneur so that not only the area is developed but even the work is afforded to / offered to the natives. The petitioner made an application on 31/1/1987 for allotment of the land. It appears when 1987 policy was in vogue, some other persons also made similar applications, their applications were considered and certain parcels of lands were allotted in their favour. The said allotments were made in the year 1988. However, the application of the petitioner remained undecided and no orders on the same was made. After learning that some parcels of lands have been allotted in favour of other applicants, the petitioner made certain representations to the State Government, but, did not come to this Court on the ground of discrimination or claiming equal rights. His representations were not considered. Being undeterred by the non-consideration, petitioner went on making representations. It appears that before the application of

the petitioner could be considered, 1987 policy was done away with and 1992 policy came in force. The State Government, after coming into effect of 1992 policy, informed the petitioner that his application now could not be considered. Being aggrieved by the non-consideration of the application right in time and rejection of the application in view of 1992 policy, the petitioner is before this Court.

4. Notices were issued to the Government, but as usual, the State maintains silence of its sphynx, though it looks at everything but does not open its mouth. The State Government, for the reasons best known to it and with the sense of responsibility, I say, is not interested in filing reply even in the High Court, probably under an impression that the moment it files its reply, it may expose to the judicial wrath of this Court. The main plank of the arguments of the petitioner is that the petitioner was discriminated, his representations were not considered right in time and he had a legal expectation in his favour. It is also submitted that Article 14 would come in play and would protect the right of the petitioner because, the petitioner stands at par with the others who are allotted the land.

5. I have not heard the learned Assistant Government Pleader for the respondents on the merits of the matter, because, he has not filed any reply.

6. The concept of equity under Article 14 is well known to the world. Article 14 applies to a case where person who claims rights, comes to the Court right in time and does not go into hibernation. If a man goes into a deep sleep and comes to the court after long many years, then, the Court would refuse to exercise its power under Article 226 of the Constitution of India. Late decision if can be termed as bad decision, then, late action on the part of the petitioner would also close his rights and put an end to it, because, the delay defeats the right. The delay would not pave the path of the petitioner, who, knowing well that his rights are assassinated, does not come to the court. Making of representations may provide some solace to a person but that would not explain the delay. The sword of delay would always strike on the rights of a party unless, the person is in a position to explain the delay, by having a sheath on his head and provides logic and reason.

7. So far as the question of expectation is concerned, I must say that but for depositing a sum of Rs.12,000.00, the petitioner did not do anything. Nothing has been brought

on the record to show or suggest, rather to prove that the petitioner did something and challenged his possession irretrievably under the impression that the State would allot him land and because of the non-allotment of the land, he suffered irreparable loss.

8. I pointedly asked the learned counsel for the petitioner that whether 1987 policy confers certain indefeasible rights upon the petitioner and whether there were certain vested right in favour of the petitioner, Mr.A.J. Patel, learned counsel for the petitioner with his usual fairness submitted that only right the petitioner had was of consideration of his application. If such was the right of the petitioner, then, writ cannot be issued against the Government after 1987 policy has been done away with. If a direction is issued to the Government to consider the application in accordance with 1987 policy, then, the Court for the purposes of present writ application, will have to hold that for the petitioner 1987 policy still stands. It is trite to say that when the Government changes any policy, all pending applications, which do not meet the requirements of the changed policy, are to be rejected. It must be repeated that after learning about grant of land to some other, the petitioner could

approach to this court in the year 1988 itself, but he did not do so. The reply of Mr.Patel to this is only that as a good citizen, the petitioner was awaiting the judgment of the State Government. In a given case, where simple representations are made, then, virtually such person is dragging a dead horse and trying to make it run. If the Government has closed its eyes to the rights of a citizen, then, the citizen with the open eyes should fight for its rights. In the present case, unfortunately, the petitioner was enjoying his hibernation and was finding absolute solace in his inaction.

9. If at this stage, a direction cannot be issued in favour of the petitioner that the petitioner's application be considered in accordance with 1987 policy, then, no writ can be issued in favour of the petitioner.

10. It is to be seen that the Government had sent a Draft of Rs.18,090/- inclusive of interest at the rate of 10.5% per annum. If the petitioner, in his wisdom did not encash the Draft, then, at this stage, he cannot make a complaint that the money be refunded to him with interest.

11. The petition deserves to and is accordingly dismissed. Rule is discharged. Interim relief, if any, is vacated. However, I would allow cost in favour of the petitioner

even while dismissing the writ application, because, the conduct of the Government all throughout had been unfair, they did not consider the application of the petitioner in time which defeated the right of the petitioner and did not choose to file their reply even in the High Court. The respondents – Government shall pay a sum of Rs.5000/- (Rupees Five Thousand only) to the petitioner as costs.

(R.S. GARG, J.)

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